

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2830 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VISHNUBHAI HIRABHAI DORIWALA

Versus

AMDAWADI SHRIMALI SONI

Appearance:

MRS KETTY A MEHTA for Petitioner
MR SV BACHANI for Respondent No. 1
NANAVATY ADVOCATES for Respondent No. 2
MRS TANVEER M SHAIKH for Respondent No. 3
Respondent No. 4 deleted.
RULE SERVED on Respondent No. 5,
Mr. Sudhansu Patel, AGP for Respondent No.6.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 13/10/2000

ORAL JUDGEMENT

By passing the order on 31st January 1994, the
Joint Charity Commissioner, Baroda, granted the
permission to the respondent No.1, a registered Trust
under the Bombay Public Trusts Act, to sell the land in

question to respondent No.2, against which Revision Application preferred came to be dismissed by the Gujarat Revenue Tribunal by its judgment dated 19th February 1996. The petitioner by this application under Articles 226 & 227 of the Constitution of India therefore challenges the legality and validity of both the orders.

2. Briefly stated, the facts leading the petitioner to file the petition are that the respondent No.1 is a Public Charitable Trust registered under the provisions of the Bombay Public Trusts Act (for short, "the Act"). The Trust owns the land, the final Plot number of which is 13. That land is situated in Katargam area of Surat city. The same is admeasuring 7619.37 sq.meters. For boosting the purpose and object of the Trust and for the well being of the community people, the Trust decided to sell the land. It was also difficult for the Trust to protect the land from the hutment-dwellers who were often trying to trespass into the land and encroach the same. The respondent No.1 therefore resolved to sell the land. As the permission to sell the land under Section 36 of the Act was necessary, the respondent No.1 applied on 15th June 1991 for necessary permission. Revubhai Popatbhai Patel one of the partners of respondent No.2 putforth his offer to purchase the land for Rs. 92,61,101/= but the Joint Charity Commissioner did not accept the offer. The respondent No.1 again applied for the sale of the land pursuant to which the Joint Charity Commissioner gave the public notice inviting the tenders in sealed covers on 14th June 1993. The upset price was fixed at Rs. 93,00,000/=. The respondent No.2 sent his offer by a registered letter but not in sealed cover. The same was received by the Office of the Joint Charity Commissioner on 21st June 1993. A member of the staff of the Office of the Joint Charity Commissioner opened the said letter and kept the same open & unsealed from 21st June 1993 till 25th June 1993, the day on which the tenders were to be opened. The petitioner send the offer for Rs. 1,11,00,000/= along with 10% deposit amount on 24th June 1993. That Letter of Offer was received by the Joint Charity Commissioner on 25th June 1993. That offer was in sealed cover. The Charity Commissioner called the advocate for the respondent No.2 and the Managing Trustee of respondent No.1 to remain present on 25th June 1993 when the tenders received were to be opened. The petitioner was not informed. In the presence of the Advocate and Managing Trustee when the tenders were opened, the offer of the respondent No.2 was accepted. In the tender sent, the respondent No.2 had by erasing the figure of Rs. 96,00,000/-, substituted the figure of Rs. 1,22,00,000/- and that too without any signature or

initial. Original offer was then returned to the advocate for respondent No.2 and only the xerox copy was kept by the Joint Charity Commissioner. Ordinary practice regarding submission of tender and auction for getting the maximum possible price was not followed. The offer of respondent No.2 was also conditional. The petitioner had informed the Joint Charity Commissioner that if time was given to him, as the time prescribed in the advertisement was too short he would file the tender of a particular value and if required he was prepared to increase the same, but to his utter surprise he was not called in person. On 31st January 1994 the Joint Charity Commissioner passed a resolution-cum-order accepting the tender of the respondent No.2 and rejecting the tender of the petitioner. The petitioner therefore preferred the Trust Appeal No. AS No.1 of 1994 in the Gujarat Revenue Tribunal under Section 36 (3) of the Act. It was pointed out to the Tribunal that the offer of respondent No.2 was not in sealed cover and therefore it was not the valid offer. The Joint Charity Commissioner ought to have asked others to raise the price with a view to get the best price for the land in the interest of the Trust. The petitioner also brought to the notice of the Tribunal that his offer was not considered and rejected on irrelevant ground. He was also not given the opportunity to increase the price. As he was not called on 25th June 1993 he could not do so. The handing over of the original tender back to the advocate of respondent No.2 was contrary to law. The Tribunal however did not accept any of his submissions and rejected the Revision Application on 19th February 1996. Being aggrieved by such orders the present petition is filed calling in question the legality and validity of the aforesaid two orders.

3. It is the contention of the learned advocate representing the petitioner that the learned Joint Charity Commissioner has passed the order arbitrarily overlooking the provisions of law. No endeavour to get the maximum possible price in the interest of Trust was ever made by the learned Joint Charity Commissioner. As made clear by the Supreme Court in the case of Ram & Shyam Company Vs. State of Haryana - AIR 1985 S.C. 1147 when not the property of the individual but the property belonging to the State or the community or the public property is to be dealt with for public purpose and in public interest or the interest of the community, there should be no hanky panky and the deal must be done by the best price so that larger revenue coming into the coffers of the Trust administration would serve the interest of those or for whose benefit the Trust is established &

functioning. It is made clear at this stage that for the purpose of applying the principle as made clear by the Supreme Court so far as this case is concerned the Court may read the word "Trust" in the place, the word "State". Regarding the approach to be adopted while dealing with the public properties attention of this Court is also drawn to another decision of the Supreme Court rendered in the case of Divya Manufacturing Company (P) Ltd., & Ors Vs. Union Bank of India and Others. (2000) 6 SCC 69 wherein it is laid down that if any irregularity or illegality or fraud is found in auctioning out the property, it would be just and proper on the part of the Court to direct for inviting the sealed tenders again and carry out the auction or sale in accordance with law after giving due publicity in the newspaper. In the case on hand, the Charity Commissioner did not try his best to get the maximum price. The petitioner had offered to purchase the land for Rs. 1,40,00,000/= against the offer of respondent No.1 for Rs. 1,22,00,000/=. The petitioner also challenges the orders on two more grounds. Firstly the tender must be unconditional but in the case on hand the offer of the respondent No.1 was conditional, and secondly the offer must be sent in the sealed cover. However, in this case the offer was sent in cover simply pasted with gum, with the result the member of the staff of the Joint Charity Commissioner's Office was able to open the same on 21st June 1993, and he kept the same open & unsealed till 25th June 1993 the day on which the tenders were to be opened. Owing to such mischief, the orders in question may be held bad in law. In support of such contention, my attention is drawn to the two decisions, one of the Bombay High Court in Datta Gyanaba Bokde Vs. Vice Chancellor, Marathwada University, Aurangabad and Others = 1990 Mah. L.J. 775, and another of the Apex Court in Tata Cellular Vs. Union of India - AIR 1996 S.C. 11. Attention is also drawn to the decision of this Court rendered in the case of Thakorebhai Gangaram Vs. Ramanlal M. Reshamwala = 1993 (1) G.L.H. 473, wherein the guideline for the powers to be exercised by the Charity Commissioner under Sec. 36 is given for the purpose of fetching maximum possible price. These decisions are not correctly appreciated by both the authorities below is also the submission advanced.

4. Against such submission, the learned advocates representing the respondents submit that as made clear by this Court in the case of Thakorebhai Gangaram (Supra), the material points were in fact considered. The Charity Commissioner found that there was a compelling necessity to sell the land in question. The sale of the land for

Rs. 1,22,00,000/= offered by respondent No.2 was quite just and fair and the sale in question was not in any way adversely affecting the interest of the Trust. The learned advocates have also in their submissions pointing out several factual points found fault with the petitioner. According to them 10 days' time for submission of tender was given and the said period expired on 24th June 1993. The offer of the petitioner was received on 25th June 1993 which was late by a day. When the offer was received late, it was in fact not the valid offer at all and Charity Commissioner was not bound to take cognizance thereof. Secondly if at all the same would have been considered there was no justification to accept the offer of the petitioner because he had at that time offered to purchase the land for Rs. 1,11,11,111/= which was certainly less than the offer of respondent No.2, and had also not remitted 10% deposit amount but had only sent Rs. 51,000/- by a cheque. Further, when this petition was placed for first order before the Court on 17th April 1996, the petitioner shrewdly offered to pay Rs. 1,40,00,000/-. His such strategy to defeat the legitimate claim of respondent No.2 must be glowered at and curbed. When the tenders were opened on 25th June 1993 there were in all two offers one from the petitioner which was late by a day and another from the respondent No.2. The offer from respondent No.2 being the only and of a higher amount was naturally accepted by the Joint Charity Commissioner. The petitioner's offer being late was required to be kept out of consideration. Nothing wrong has therefore been done by the Joint Charity Commissioner so as to justify the interference of this Court. Even the petitioner did not comply with the order of this Court passed on 17th April 1996. As per that order the petitioner was directed to deposit the amount of Rs. 1,40,00,000/- within 10 days with the Joint Charity Commissioner, Baroda, and on that count interim relief was granted to the effect that no further step in respect of the acceptance of the tender of respondent No.2 shall be taken. What is shocking to note is that within 10 days the petitioner did not deposit the amount as directed by this Court; on the contrary he filed Civil Application No. 4300 of 1996 and requested the Court to grant some time and permit him to make the payment within the extended time. This Court rejected the Civil Application and frustrated his dodge. Thereafter he took the earnest money back after his offer was not accepted. There was in fact no erasure in the letter of offer sent by respondent No.2 because the demand draft for Rs. 12,22,000/-, the 10% deposit amount dated 19th June 1993 was sent and that could never have been obtained later on by any trickery which negatives the theory of erasures.

Nothing in collusion as submitted has been done by the Charity Commissioner.

5. So far as the ground of erasure is concerned, the learned advocate representing the petitioner withdrew the same when query was made by the Court. Of course, the original figure of Rs. 95,00,000/- is erased and 1,22,00,000/- is substituted but the bonafide of the concerned Officer cannot be doubted because along with the same the demand draft getting the same from the bank on 19th June was also attached and there is no erasure on the demand draft. That shows that before sending the offer the respondent No.2 thought it fit to increase his offer and therefore he by erasing put up the higher figure and then getting Demand Draft despatched the same.

6. In such application when there is jurisdictional error or decision making error, the Court can interfere or if there is colourable exercise of power vitiating the order passed by the authority is found, this Court can interfere. In view of the rival contentions shortly stated hereinabove several questions of fact are raised which I cannot dissect on merits and give any finding thereon as they fall beyond the scope of my inquiry in writ petitions. I will therefore confine to only two points falling within the scope of inquiry and on which the learned advocates argued at length so as to show whether there was colourable exercise of power by the Charity Commissioner or not.

7. Of course as laid down in the case of Tata Cellular (Supra) the offer must be unconditional. The person sending the tender and thereby making the offer cannot impose any condition on the person inviting the tenders, but the person inviting the tenders has a right to set out the conditions of sale or tender, and the person sending the offer accepts the conditions prescribed by the person inviting the tender, referring the same specifically in the tender form, it will not amount to imposing the condition by him on the person inviting the tenders. In other words the person sending the offer cannot impose his conditions on the person inviting the tenders, as his offer must be unconditional, but his acceptance of the conditions of tender which he is bound to will not render his offer conditional.

8. My attention is drawn to annexures 'B' & 'C', the offers sent by both the parties. The same show that neither of the parties has imposed his own conditions on the Trust or Charity Commissioner inviting the tenders. What becomes clear is that both have mentioning

specifically, in clear terms accepted the conditions of tender set out in prescribed tender form by the Trust inviting the tenders. When thus the offers of both are unconditional, the same cannot be held bad as canvassed.

9. As per the advertisement, the copy of which is produced at Annexure 'A' and printed copy at Annexure R/1, the tenders were invited in sealed cover. The tender sent by respondent No.2 was not in sealed cover, but the same was simply pasted. The learned advocate for the petitioner has drawn my attention to the dictionary meaning of the word "Seal" given at Page 429 in Mozley & Whiteley's Law Dictionary, 10th Edn. It is drawn which shows that the things can be said to have been sealed if there is wax impression with a device, and attached as a mark of authenticity to letters and other instruments in writing. In this regard, my attention is also drawn to a decision of the Bombay High Court rendered in the case of Datta Gyanaba Bokde (Supra) wherein also the meaning of the word "Seal" is given. According to that decision which is based on Shorter Oxford English Dictionary, "Seal" means fastened with melted wax or some other plastic material and impressed a seal upon it so that opening is impossible unless the seal is broken. In that decision it is also made clear that if the tender or offer is required to be sent in sealed condition, (if that is the condition set out for sending the tender) the object thereof is to maintain the secrecy in respect of the offer and check any act of tampering with the same. If that is the object, it is also observed that to achieve the object, the term in the tender notice that the tender should be sent in sealed condition must be held to be mandatory in nature and non-compliance of it will disentitle the consideration of the offer. Whenever the tenders are invited in sealed condition, the object is to maintain secrecy and prevent the mischief being played with the envelope/cover. In view of this decision, if the offer is not made in sealed cover, the non-compliance will disentitle the consideration of the offer. In the case on hand, the respondent No.2 had no doubt sent the offer in the cover simply pasted, but it was not sealed, and by mistake or for any other reason the member of the staff of the Joint Commissioner's Office opened the same, and then the offer remained in flawed state upto 25th June 1993. The secrecy was then vitiated as the offer was accessible to all so as to know its contents if at all any one wanted to know about the same in details. The learned Charity Commissioner in view of this decision ought not to have accepted the offer made by respondent No.2 which was the only offer, not only dissatisfying this condition but also casting

clouds of suspicion on its credibility owing to above stated fact namely sending in unsealed condition.

10. In the case on hand, a Trust property was involved and thereby there was the corporate interest because in the Trust property the section of the people for whose benefit the Trust is functioning is interested and so the trust property cannot be considered to be the property of some individual. The Charity Commissioner therefore ought to have resorted to the guidelines given in the case of Ram and Shyam Company (Supra). By opening the tender of the petitioner and seeing the tender of the respondent No.2 the Charity Commissioner must have noticed that both had offered more amounts than what in past the offers were made. The petitioner offered to pay Rs. 1,11,00,000/= while the respondent No.2 offered to pay Rs. 1,22,00,000/=. During pendency of this petition as per the above stated facts the petitioner showed willingness to pay even Rs. 1,40,00,000/= although he later on failed to pay as per court's direction. One can hence easily note that the land in question can fetch huge amounts i.e. good round sum than proposed offers. The petitioner's tender was late by a day and so it was required to be kept out of consideration. The only unsealed tender of respondent No.2 had then remained for consideration. In view of such facts, the Charity Commissioner in order to have best marketable price & protect the interest of the trust ought to have invited fresh tenders by due publicity. When that is not done, it amounts to colourable exercise of power and that vitiates the acceptance of the offer made by respondent No.2.

11. In view of the aforesaid ground, the orders passed by the Revenue Tribunal and also the Joint Charity Commissioner are required to be quashed and set aside directing the Joint Charity Commissioner to invite the tenders afresh so as to get the best marketable price making the field competitive. He shall also give the opportunity to the present petitioner to put forth his offer.

12. In the result, the application is allowed. The order of the Charity Commissioner dated 31st January 1994 at Annexure E and the order passed by the Revenue Tribunal on 19th February 1996 confirming the order of the Joint Charity Commissioner are hereby quashed and set aside. The Joint Charity Commissioner is hereby directed to again invite fresh tenders so as to have best marketable price giving opportunity to the petitioner and respondent No.2 & others to submit their offers and then

decide whose offer is in law required to be accepted and pass appropriate order in that regard. Rule accordingly made absolute.

13. When this application is allowed, certainly huge amounts up-till-now paid by respondent No.2 will have to be paid back. With a view not to cause any loss to him, the same shall be refunded with reasonable interest which the Charity Commissioner may fix or if the respondent No.2 prefers to again send his offer the amounts can be adjusted.

14. At this stage, the learned advocates representing the respondents No. 1 & 2 pray for stay against the operation of this order. In view of their submissions and the facts on record, this order shall not be implemented till 15th of December, 2000.

=====

rmr.